

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 944 of 1999

in

SPECIAL CIVIL APPLICATION No 320 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?-No.
2. To be referred to the Reporter or not?-No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No. :

VIHAR AHAR PVT LTD

Versus

ONGC LTD

Appearance:

MR YN OZA for Appellant

MR RAJNI H MEHTA for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

Date of decision: 20/07/1999

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

The appellant herein had entered into a house

keeping contract with the respondent-Oil and Natural Gas Commission. The respondent-Commission issued a notice, terminating the contract, and aggrieved by the same, the appellant filed Special Civil Application No.320 of 1999, and initially obtained an order of stay of termination of the contract and the appellant continued to do the contract work. As per the terms of the contract, the period of contract would expire by 31.7.1999. The respondent-Commission entered appearance and moved for vacating the interim stay. The matter was transferred to another learned single Judge of this Court, the matter was heard and the impugned judgment was passed. The learned single Judge has taken the view that the matter is purely in the realm of contract and, therefore, the appellant herein would not be justified in enforcing the contract by invoking Article 226 of the Constitution.

The learned counsel for the appellant relied on three decisions. In Mahabir Auto Stores and others v. Indian Oil Corporation and others, AIR 1990 SC 1031, the Supreme Court emphasized that whatever be the activity of the public authority, it should meet the test of Article 14 of the Constitution. If a Governmental action, even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. The appellants before the Supreme Court were dealing in all kinds of lubricants supplied by the Indian Oil Corporation. They filed a writ petition, seeking an order, directing the Indian Oil Corporation to desist from denying or discontinuing the supply of all kinds of lubricants to the appellant No.1 and from ousting, blacklisting, coercing or pressurizing the appellant No.1 from the business of dealing with all kinds of lubricants supplied by the respondent company. In the said decision, the general principles are laid down by the Supreme Court. Here, the question is whether the Court could interfere in matters to enforce a specific contract entered into by a party with an instrumentality of the State. That question did not come up for consideration by the Supreme Court in that case.

M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, AIR 1989 SC 1642 is a case where the Board of Trustees of the Port of Bombay wanted to evict the tenants, who were in occupation of various plots owned by the Port Trust. In that case, the

Supreme Court said that being a public body, even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. That was also not a case where the petitioner therein wanted to enforce specific contract.

The last decision relied on by the appellant's counsel is Kumari Shrilekha Vidyarthi v. State of U.P. and others, AIR 1991 SC 537. That is a case in which removal of all District Government Counsel in the State of Uttar Pradesh was challenged and the Supreme Court held that it was an arbitrary exercise of power. That too, was not a case of individual contract and, therefore, this question was not specifically considered by the Supreme Court.

However, the Supreme Court in clear terms held that in contractual matters, the extraordinary jurisdiction conferred under Article 226 shall not be exercised. In Food Corporation of India v. Jagannath Dutta, 1993 Supp. (3) SCC 635, the Food Corporation of India entered into a contract with a private party and the contract was terminated by the Food Corporation of India after giving notice to the contractor. The decision was based on a policy taken by the FCI. It was held that the High Court was not justified in quashing the impugned notice especially when the terms and conditions of the contract permitted the termination of the agreement by either party. It was further held that the High Court should not have gone into the question of contractual obligation in its writ jurisdiction. Setting aside the order of the High Court, the Supreme Court held that even otherwise, it grossly erred in reaching the conclusion that no policy decision was taken by the FCI to terminate the storage agencies.

In Improvement Trust v. S. Tejinder Singh Gujral, 1995 Supp (4) SCC 577, the Supreme Court held that an Advocate cannot file a writ petition for recovery of professional fees from his client. In that case also, the Supreme Court held that the specific performance of the contract cannot be resorted to by invoking the powers under Article 226 of the Constitution.

It was also held in State of Gujarat v. M.P. Shah Charitable Trust (1994) 3 SCC 552, that in case of termination of an agreement between private party and the State Government and if the matter is governed by the provisions of the Contract Act, writ petition is not maintainable.

In view of the aforesaid decisions, the learned single Judge was justified in taking the view that the writ petition was not maintainable.

It may be noted that the learned single Judge held that this is a case where there are disputes between the parties and in view of the disputed facts, the parties should approach the civil court to settle their disputes and, in fact, pursuant to the judgment of the learned single Judge, the appellant herein filed a civil suit, which is pending. Initially, interim order was granted in favour of the appellant, but, later, it was vacated and against that order, the appellant has filed an appeal, which was later converted into a Civil Revision Application, and that is pending consideration before a learned single Judge of this Court.

In view of the aforesaid circumstances, we are not inclined to interfere with the impugned judgment. We make it clear that whatever stated by the learned single Judge in the impugned judgment shall not have any persuasive effect in the proceedings in the civil matter.

The Appeal is dismissed.

(apj)